

At a Special Term of the Supreme Court of the State of New York, in the County of Monroe, at the Hall of Justice, 99 Exchange Boulevard, Rochester, New York, on the \_\_\_\_ day of \_\_\_\_\_, 2019.

Present: HON. \_\_\_\_\_  
Justice of Supreme Court

SUPREME COURT  
COUNTY OF MONROE STATE OF NEW YORK

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ROCHESTER SCHOOL DISTRICT,  
and the BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT,

Petitioners,

- against -

CITY OF ROCHESTER, LOVELY A. WARREN,  
as Mayor of the City of Rochester, COUNCIL OF  
THE CITY OF ROCHESTER, and the MONROE  
COUNTY BOARD OF ELECTIONS,

Respondents.

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**ORDER TO SHOW CAUSE  
AND ORDER OF PRELIMINARY  
INJUNCTION**

Index No.: \_\_\_\_\_

**UPON** the attached Notice of Petition, Verified Petition, and Affirmation of Alison K.L. Moyer with accompanying exhibits, dated July 26, 2019, submitted on behalf of the Petitioners, Rochester City School District, and the Board of Education of the Rochester City School District, and upon all the pleadings and proceedings heretofore had herein, and due deliberation having been had thereon;

**IT IS HEREBY ORDERED**, that an Order of Preliminary Injunction is granted pursuant to CPLR § 6311, enjoining the Respondents, City of Rochester, Lovely A. Warren, as Mayor of the City of Rochester, Council of the City of Rochester, and the Monroe County Board of Elections, from

placing the Referendum referred to in Local Law 4, entitled “Our Children, Our Future,” duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the “Referendum”), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the “Ballot”); and enjoining the Respondents from further using public funds with regard to the Referendum; and any undertaking under CPLR § 6312 be waived as to the Petitioners pursuant to CPLR § 2512(1); and it is further

**ORDERED**, that Respondents appear and show cause before a Special Term of the Court to be held at the Hall of Justice, 99 Exchange Boulevard, Rochester, New York, 14614, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m./p.m., or as soon thereafter as counsel can be heard, as to why an Order and Judgment should not be entered pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum, and for an Order granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the Ballot and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable; and it is further

**ORDERED**, that sufficient reason and cause appearing therefor, and at least twenty-four (24) hours’ notice of the instant application having been given to the Respondents pursuant to CPLR § 6311, by hand-delivery of the instant Order to Show Cause and accompanying papers, on Friday, July 26, 2019; and that personal service of a copy of this signed Order and the papers upon which it is based upon the Respondents be made by the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m./p.m., be deemed good and sufficient service; and it is further

**ORDERED**, that Respondents shall serve responsive papers, if any, on the Petitioners at the address of counsel set forth in the accompanying papers by personal service by the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m./p.m.

DATED: July \_\_\_\_\_, 2019  
Rochester, New York

ENTERED:

\_\_\_\_\_  
HON. \_\_\_\_\_  
Justice of the Supreme Court of Monroe County

SUPREME COURT  
COUNTY OF MONROE STATE OF NEW YORK

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ROCHESTER SCHOOL DISTRICT,  
and the BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT,

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CITY OF ROCHESTER, LOVELY A. WARREN,  
as Mayor of the City of Rochester, COUNCIL OF  
THE CITY OF ROCHESTER, and the MONROE  
COUNTY BOARD OF ELECTIONS,

Respondents.

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**NOTICE OF PETITION**

Index No.: \_\_\_\_\_

**PLEASE TAKE NOTICE**, that upon the annexed Verified Petition of Karl W. Kristoff, General Counsel for the Rochester City School District, verified on July 26, 2019, an application will be made at a Special Term of the New York State Supreme Court, in and for the County of Monroe, to be held at the Hall of Justice in Rochester, New York, the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m./p.m., or as soon thereafter as counsel can be heard, for the following relief:

(1) An Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the Respondents, City of Rochester, Lovely A. Warren, as Mayor of the City of Rochester, Council of the City of Rochester, and the Monroe County Board of Elections, from placing the Referendum referred to in Local Law 4, entitled "Our Children, Our Future," duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the "Referendum"), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the "Ballot"); and enjoining the Respondents from further using public funds with regard to the Referendum; and waiving any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1); and


(2) An Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum, and for an Order and Judgment granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable.

**PLEASE TAKE FURTHER NOTICE** that answering papers, if any, must be served pursuant to the Court's directive in the Order to Show Cause and/or pursuant to CPLR § 403.

Dated: July 26, 2019  
Rochester, New York

**ROCHESTER CITY SCHOOL DISTRICT  
DEPARTMENT OF LAW**  
**Karl W. Kristoff, General Counsel**  
*Attorneys for Petitioners*

BY:

  
Alison K.L. Moyer, Esq.  
131 West Broad Street  
Rochester, New York 14614  
(585) 262-8550  
alison.moyer@rcsdk12.org

TO: CITY OF ROCHESTER  
30 Church Street  
Rochester, New York 14614

LOVELY A. WARREN as Mayor of the City of Rochester  
30 Church Street  
Rochester, New York 14614

COUNCIL OF THE CITY OF ROCHESTER  
30 Church Street  
Rochester, New York 14614

MONROE COUNTY BOARD OF ELECTIONS  
39 West Main Street, Suite 106  
Rochester, New York 14614

SUPREME COURT  
COUNTY OF MONROE STATE OF NEW YORK

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ROCHESTER SCHOOL DISTRICT,  
and the BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT,

Petitioners,

- against -

CITY OF ROCHESTER, LOVELY A. WARREN,  
as Mayor of the City of Rochester, COUNCIL OF  
THE CITY OF ROCHESTER, and the MONROE  
COUNTY BOARD OF ELECTIONS,

Respondents.

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**VERIFIED PETITION**

Index No.: \_\_\_\_\_

Petitioners, Rochester City School District and the Board of Education of the Rochester City School District, by Karl W. Kristoff, General Counsel for the Rochester City School District, as and for its Verified Petition, respectfully alleges as follows:

JURISDICTION

1. The Court has jurisdiction to grant the relief requested under Article 78 of the CPLR.

VENUE

2. Pursuant to CPLR §§ 504 and 506, the venue of this proceeding is Monroe County, the county where the Petitioners and the Respondents are located and where the determination challenged by this proceeding was made.

## PARTIES

3. Petitioner, Rochester City School District (hereinafter the "District"), is a city school district organized under and subject to the Laws of New York State, with its principal office located at 131 West Broad Street, Rochester, New York 14614.

4. Petitioner, Board of Education of the Rochester City School District (hereinafter the "Board"), is a body corporate organized under and subject to the Laws of New York State. The Board is the governing body of the District, located at the address of the District, above.

5. Respondent, City of Rochester (hereinafter the "City"), is a municipal corporation organized under and subject to the Laws of New York State, with its principal office located at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter "City Hall").

6. Respondent, Lovely A. Warren, Mayor of the City of Rochester (hereinafter the "Mayor"), is a municipal officer elected under and subject to the Laws of New York State, with the Mayor's principal office being located at City Hall.

7. Respondent, Council of the City of Rochester (hereinafter the "City Council"), is the governing body of the City, organized under and subject to the Laws of New York State, vested with all legislative power of the City, located at City Hall.

8. Respondent, Monroe County Board of Elections (hereinafter the "Board of Elections") is a Department of Monroe County responsible for administering all aspects of elections in Monroe County, organized under and subject to the Laws of New York State, with its principal office located at 39 West Main Street, Rochester, New York 14614.



## PETITIONERS' CLAIMS

9. By way of this Petition, Petitioners respectfully request that the Court issue an Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the Respondents, City of Rochester, Lovely A. Warren, as Mayor of the City of Rochester, Council of the City of Rochester, and the Monroe County Board of Elections, from placing the Referendum referred to in Local Law 4, entitled “Our Children, Our Future,” duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the “Referendum”), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the “Ballot”); and enjoining the Respondents from further using public funds with regard to the Referendum; and waive any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1).

10. Petitioners further respectfully request that the Court issue an Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, determining that the Referendum is an unauthorized advisory referendum; granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable.

11. On May 23, 2019, the City published a news release promoting a possible plan for New York State to assume control of the District. In the release, the City also published a video of the Mayor urging residents to contact their senators and assembly members to support a State takeover.

12. On June 7, 2019, the City announced that it had submitted legislation to the City Council to put a referendum on the November ballot asking city residents to support a State takeover of the District.



13. The City thereafter submitted a letter to the City Council with a proposed Local Law, entitled “Our Children, Our Future.” The City advised the City Council that its intent was “to ask its citizens, by the affirmative vote of its electors, to determine if removal of the Board . . . to allow the State . . . to institute necessary processes and procedures would provide a better educational outcome for our City students.” The City also provided a statement of necessity for amending the City Charter “to allow the State Commissioner of Education to institute necessary processes and procedures that will provide a better educational outcome for our City students.”

14. The City Council discussed and considered the proposed Local Law, and approved the legislation and Referendum during its June 18, 2019 regular meeting.

15. The Local Law was duly passed by the City Council on June 18, 2019, approved by the Mayor, and was duly adopted on July 8, 2019. The Local Law, as it was passed, proposed the amendment of the City Charter, as follows:

- a. The Local Law proposed the removal of the phrase “the Commissioners of Schools” from the provision of the City Charter governing the ability of City residents to elect municipal officers.
- b. The Local Law proposed the removal of the phrase “and the term of office of Commissioners of Schools is four years” from the provision of the City Charter governing the terms of office of municipal officers.
- c. The Local Law proposed the deletion of the provision of the City Charter governing the salaries of the Commissioners of the Board of Education.

- d. The Local Law proposed that the amendment to the City Charter remain in effect for a period of not less than five years.

16. The City, Mayor, and City Council, determined that the Local Law should be submitted to voters through the Referendum, “and shall take effect only if and when it is certified as having been approved by the affirmative vote of a majority of the qualified electors voting on said proposition and the enactment of appropriate enabling amendments to the Education Law.”

17. On July 12, 2019, the Mayor sent a letter to Rochester residents urging residents to vote on the Referendum. The letter appeared to convey approval for the Referendum.

18. On July 19, 2019, the Democrat and Chronicle published an article revealing that the Mayor’s letter was sent to 30,000 addresses, at an expense to the public of approximately \$10,000.

19. On July 23, 2019, Thomas F. Ferrarese, Commissioner of the Board of Elections, advised that the City has indicated to the Board of Elections that it will be submitting a referendum. The City’s referendum must be submitted by August 5, 2019 if it is to be included on the Ballot pursuant to Election Law § 4-108(1)(b). Board of Elections programming ordinarily begins within a week thereafter, and printing of ballots begins in September. The issue of whether a referendum is to be included on the Ballot must be resolved by August 5, 2019.

20. As detailed in the accompanying memorandum of law and the affirmation of Alison K.L. Moyer, the Referendum proposed by the City is an unauthorized advisory referendum.

21. The Referendum is improper and invalid, and should not be placed on the Ballot.

22. The allocation of public resources to support an advisory referendum is an improper use of public funds. The City and the Mayor should not be using public funds to place the Referendum on the Ballot. The City and the Mayor also should not be using public funds to persuade the public on the merits of the Referendum, or otherwise convey favoritism, partiality, or approval of the Referendum.

23. An immediate preliminary injunction is necessary in this action to enjoin the Respondents from placing the Referendum on the Ballot by the August 5, 2019 deadline, and to enjoin the Respondents from using further public funds with regard to the Referendum.

24. The immediate need for the preliminary injunction is demonstrated by the fact that the City, the Mayor and the City Council have moved forward with the improper and invalid Referendum, and have spent in excess of \$10,000 to date advocating for and/or promoting the improper and invalid Referendum.

25. Once the Referendum is accepted by the Board of Elections, it will be extremely difficult to alter the Board of Elections' programming and printing of the Ballot.

26. Furthermore, the Referendum, if it were passed, would amend the City Charter, in an attempt to nullify the results of the duly conducted elections by which the current Commissioners of the Board of Education were placed in office, as well as operate to preclude the voters from popularly electing individuals to represent them in governing the affairs of the District, in violation of the legal rights of the District and the Board, and the residents of Rochester.

WHEREFORE, Petitioners respectfully request that this Court issue an Order and Judgment, for the following relief:

- I. An Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the Respondents,

City of Rochester, Lovely A. Warren, as Mayor of the City of Rochester, Council of the City of Rochester, and the Monroe County Board of Elections, from placing the Referendum referred to in Local Law 4, entitled "Our Children, Our Future," duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the "Referendum"), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the "Ballot"); and enjoining the Respondents from further using public funds with regard to the Referendum; and waiving any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1); and

2. An Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum, and for an Order and Judgment granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable.

DATED: July 26, 2019  
Rochester, New York

**ROCHESTER CITY SCHOOL DISTRICT**  
**DEPARTMENT OF LAW**  
**Karl W. Kristoff, General Counsel**  
*Attorneys for Petitioners*

BY:



Karl W. Kristoff, Esq.  
131 West Broad Street  
Rochester, New York 14614  
(585) 262-8550  
Karl.Kristoff@rcsdk12.org

## VERIFICATION

*Karl W. Kristoff, Esq. hereby certifies, under penalties of perjury, the following:*

I am General Counsel to the Rochester City School District, the public education institution and municipal corporation named in the foregoing Petition. I have read the foregoing Petition, and I know its contents. The Petition is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. This verification is made pursuant to CPLR §3020(d)(2).

*Subscribed and affirmed on July 26, 2019.*

  
KARL W. KRISTOFF

SUPREME COURT  
COUNTY OF MONROE STATE OF NEW YORK

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ROCHESTER SCHOOL DISTRICT,  
and the BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT,

Petitioners,

- against -

CITY OF ROCHESTER, LOVELY A. WARREN,  
as Mayor of the City of Rochester, COUNCIL OF  
THE CITY OF ROCHESTER, and the MONROE  
COUNTY BOARD OF ELECTIONS,

Respondents.

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**AFFIRMATION OF  
ALISON K.L. MOYER**

Index No.: \_\_\_\_\_

ALISON K.L. MOYER, ESQ. an attorney admitted to practice before the Courts of the  
State of New York, hereby states, under penalty of perjury, the following:

1. I am an attorney at law and Associate Counsel to Karl W. Kristoff, General Counsel  
for the Rochester City School District, and attorneys for the Petitioners, Rochester City School  
District (hereinafter the "District"), and the Board of Education of the Rochester City School  
District (hereinafter the "Board").

2. I am fully familiar with the facts herein. This affirmation is being submitted on  
behalf of the Petitioners containing information which is believed to be true. Information not based  
upon personal knowledge is based upon the matters believed to be true as contained in  
investigation, correspondence, pleadings, conferences and telephone conversations.

3. This affirmation is offered in support of the Petitioners' Order to Show Cause and  
Petition pursuant to CPLR § 6311 for a preliminary injunction enjoining the Respondents, City of



Rochester (hereinafter the “City”), Lovely A. Warren, as Mayor of the City of Rochester (hereinafter the “Mayor”), Council of the City of Rochester (hereinafter the “City Council”), and the Monroe County Board of Elections (hereinafter the “Board of Elections”), from placing the Referendum referred to in Local Law 4, entitled “Our Children, Our Future,” duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the “Referendum”), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the “Ballot”); and enjoining the Respondents from further using public funds with regard to the Referendum; and any undertaking under CPLR § 6312 be waived as to the Petitioners pursuant to CPLR § 2512(1).

4. This affirmation is further offered in support of the Petitioners’ Order to Show Cause and Petition pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum and for an Order granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the Ballot and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum, and for such other and further relief as the Court deems just and equitable.

5. On or about May 23, 2019, the City published a news release promoting a possible plan for New York State to assume control of the District. In the release, the City also published a video of the Mayor urging residents to contact their senators and assembly members to support a State takeover. A true and accurate copy of the City’s news release dated May 23, 2019, is attached as **Exhibit “A.”** The news release and video are available at <https://www.cityofrochester.gov/fixourschools/>.

6. On June 7, 2019, the City announced that it had submitted legislation to the City Council to put a referendum on the November ballot asking city residents to support a State takeover of the District. A true and accurate copy of the City's news release dated June 7, 2019, along with the linked attachment of the City's proposed legislation, is attached as **Exhibit "B."** The news release and link to the proposed legislation are available at <https://www.cityofrochester.gov/schoolreferendum/>.

7. The Mayor and President of the City Council thereafter submitted a letter to the City Council with a proposed Local Law, entitled "Our Children, Our Future." The letter advised the City Council that its intent was "to ask its citizens, by the affirmative vote of its electors, to determine if removal of the Board . . . to allow the State . . . to institute necessary processes and procedures would provide a better educational outcome for our City students." The Mayor also provided a statement of necessity for amending the City Charter "to allow the State Commissioner of Education to institute necessary processes and procedures that will provide a better educational outcome for our City students." True and accurate copies of the additional proposed legislation for the June 18, 2019 City Council meeting including a statement of necessity, letter in support, and proposed Local Law, filed with the City of Rochester Clerk on June 7, 2019, are attached as **Exhibit "C."** The documents are also available at: <https://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474841500>.

8. The City Council considered the proposed Local Law and approved the legislation and Referendum during the June 18, 2019 regular meeting. True and accurate copies of the City Council's Meeting Agenda and Worksheet detailing the passed laws and ordinances are attached as **Exhibit "D."** The documents are also available at:

<https://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474841610>

and

<https://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474841650>.

9. The Local Law was duly passed by the City Council on June 18, 2019, approved by the Mayor, and was duly adopted on July 8, 2019. A true and accurate copy of the Certified Local Law is attached as **Exhibit “E.”** The Certified Local Law is also available at: <https://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474841648>.

10. On July 12, 2019, the City sent a letter to Rochester residents urging residents to vote on the Referendum. The letter appeared to convey approval for the Referendum through phrases including “I want to tell you why we believe [the City Council’s vote for a referendum for temporary state leadership of the District] was necessary” and a description of how temporary state leadership would “allow us to reset the school system.” A true and accurate copy of the letter is attached as **Exhibit “F.”**

11. On July 19, 2019, the Democrat and Chronicle published an article revealing that the City’s letter was sent to 30,000 addresses, at an expense to the public of approximately \$10,000. A copy of the Democrat & Chronicle’s article, *Legality of Mayor’s Letter on School Vote ‘a Judgment Call,’ State Watchdog Says*, is attached as **Exhibit “G.”** The article is also available at: <https://www.democratandchronicle.com/story/news/2019/07/19/legality-warren-letter-rbsd-referendum-state-takeover/1768487001/>.

12. On July 23, 2019, the undersigned spoke to Thomas F. Ferrarese, Commissioner of the Board of Elections. Commissioner Ferrarese advised that the City has indicated to the Board of Elections that it will be submitting a referendum. The City’s referendum must be submitted by August 5, 2019 if it is to be included on the Ballot. Commissioner Ferrarese further advised that,

Board of Elections programming ordinarily begins within a week thereafter, and printing of ballots begins in September. Commissioner Ferrarese confirmed that the issue of whether a referendum is to be included on the Ballot must be resolved by August 5, 2019.

13. As explained further in the accompanying memorandum of law, the Referendum proposed by the City is an unauthorized advisory referendum. The Referendum seeks to determine an issue that is outside the powers expressly granted to the City in its Charter. The Referendum conflicts with authority granted by the State, through the Education Law, specifically Education Law § 2553. Any change to the City Charter would be preempted by the Education Law. Essentially, the Referendum is an advisory popular vote, having no legal effect or consequence by its passage. Therefore, the Referendum is improper, and should not be placed on the Ballot.

14. The City should not be using public funds to place the Referendum on the Ballot. No public money should be spent on the Referendum, because it is improper and invalid. Moreover, while the City may use public funds to educate and inform constituents, the City, the Mayor, and members of City Council may not use public funds to send correspondence or newsletters attempting to persuade, convey favoritism, partiality, or approval of the Referendum.

15. As also explained in the accompanying memorandum of law, an immediate preliminary injunction is necessary in this action to enjoin the Respondents from placing the Referendum on the Ballot by the August 5, 2019 deadline, and to enjoin the Respondents from using further public funds with regard to the Referendum.

16. The immediate need for the injunction is demonstrated by the fact that the City has passed the Local Law, and has indicated to the Board of Elections that it will be submitting the Referendum shortly. Once the Referendum is accepted by the Board of Elections, it will be

extremely difficult to alter the Board of Elections' programming and printing of the Ballot. The Referendum should not be included on the Ballot, because as explained above, it is an unauthorized advisory referendum, and the Referendum is an improper use of public funds.


17. It is further respectfully submitted that the Referendum, if passed, would amend the City Charter, in an attempt to nullify the results of the duly conducted elections by which the current Commissioners of the Board of Education were placed in office, as well as operate to preclude the voters from popularly electing individuals to represent them in governing the affairs of the District, in violation of the legal rights of the District and the Board, and the residents of Rochester.

17. For the foregoing reasons, the Petitioners respectfully request that the Court grant an immediate preliminary injunction against the Respondents, and that the Court grant the Petition in all other respects, in its entirety.

Dated: July 26, 2019  
Rochester, New York

**ROCHESTER CITY SCHOOL DISTRICT**  
**DEPARTMENT OF LAW**  
**Karl W. Kristoff, General Counsel**  
*Attorneys for Petitioners*

BY:

  
Alison K.L. Moyer, Esq.  
131 West Broad Street  
Rochester, New York 14614  
(585) 262-8550  
alison.moyer@rcsdk12.org

# **EXHIBIT “A”**



**SEARCH:**

## **NEWS RELEASE - STATEMENT FROM MAYOR LOVELY A. WARREN REGARDING REFORM OF THE ROCHESTER CITY SCHOOL DISTRICT**

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### **City of Rochester**

### **News Release**

**Contact your State legislator to demand  
change!**

**Ask them to fix our broken schools**

**State Sen. Richard Funke**

Albany Office: (518) 455-2215

District office: (585) 223-1800

[Funke@nysenate.gov](mailto:Funke@nysenate.gov)

**State Sen. Michael H. Ranzenhofer**

Albany Office: (518) 455-3161

District Office: (716) 631-8695 / (585) 454-0322

[ranz@nysenate.gov](mailto:ranz@nysenate.gov)

**Senator Joseph E. Robach**

Albany office: (518) 455-2909

District office: (585) 225-3650

[robach@nysenate.gov](mailto:robach@nysenate.gov)

**Assemblymember Harry Bronson**

District Office: (585) 244-5255

Albany Office: (518) 455-4527

[bronsonh@nyassembly.gov](mailto:bronsonh@nyassembly.gov)

**Assemblymember David Gantt**

District Office: (585) 454-3670

Albany Office: (518) 455-5606

[GanttD@nyassembly.gov](mailto:GanttD@nyassembly.gov)

**Assemblymember Jamie Romeo**

District Office: (585) 467-0410

### **MAY WE SUGGEST**

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Just Law

Bureau of Youth Services

Community Emergency  
Response Team (CERT)

City 12 TV

Project SEARCH

Mayor's Summer Stars -  
Summer Learning  
Challenge

What's Good Rochester

Do the Right Thing  
Program - Rochester  
Police Department

Direct Connection to the  
Rochester City School  
District

Deaf Resources - City Hall  
is Here to Serve You

(Thursday, May 23, 2019) – The New York State

**SEARCH:**

Submit

Education Commissioner and the local members of the Board of Regents, given months of review, have put on the table a bold, visionary plan to provide every child in our city a quality education and address one of our greatest challenges.

Our children deserve an educational system that puts their needs above those of adults. The Commissioner is best equipped to fix our broken school system. The plan that allows for true change is the solution that our community needs. Anything less will only exacerbate the problem and put needs of adults before our children.

This solution at its heart removes any political influence from the process and truly focuses on the education of our children.

Now, it's up to our local delegation to lead the fight and I implore the entire State Legislature to fix our school system, which has failed far too many of our children for far too long. We have a clear choice.

A choice between the status quo or a brighter future.

A choice between the wants of adults or the needs of children.

A choice between families suffering or community schools that lift them up.

A choice between losing another generation of our children or allowing them to fulfill their dreams.

Our community and our Legislature must seize this last best chance to make our city's schools beacons of hope.

###

News Media: For more information, contact Press Officer Jessica Alaimo at 428-7135.

# **EXHIBIT “B”**

SEARCH:  Submit

## NEWS RELEASE --MAYOR WARREN, CITY COUNCIL TO PUT SCHOOL REFORM REFERENDUM ON NOVEMBER BALLOT

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### City of Rochester

#### News Release

(Friday, June 7, 2019) – Mayor Lovely A. Warren today announced that she has submitted legislation to the Rochester City Council to put a referendum on the November ballot that asks city voters to support a State Education Department plan to take bold action to reform the Rochester City School District (RCSD).

“To me, the people of Rochester are the ones who should make this decision. They are the ones who send their kids off to school to be educated and obtain a fighting chance at life,” Mayor Warren said. “They should have the power to decide what is next. Who matters most? Our children or those who profit from poverty?”

“I am honored to be here today, to stand with the Mayor and take action to give our community the power to request this change from the State,” said Council President Loretta C. Scott. “A change this large shouldn’t just come from a few, or come from behind closed doors, it should be a decision that is made by all. Having a referendum will put the choice in the hands of our residents, in the hands of our families with children in the schools. Our families should have a say in this decision and I am confident that when our residents voice their choice at the ballot box it will be an even

### MAY WE SUGGEST

---

[Just Law](#)

[City Council Meetings  
Calendar 2019](#)

[Bureau of Youth Services](#)

[Community Emergency  
Response Team \(CERT\)](#)

[City Council Chronicle -  
Council Newsletter](#)

[City 12 TV](#)

[Project SEARCH](#)

[Mayor’s Summer Stars -  
Summer Learning  
Challenge](#)

[What’s Good Rochester](#)

[Do the Right Thing  
Program - Rochester  
Police Department](#)

louder call to action than all the experts and elected officials combined.”

Photo Gallery

**SEARCH:**

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If passed, the referendum – titled “Our Children our Future, a Local Law for the City of Rochester” – would call for New York State to assume the operations of the City School District for no less than five years to allow parents, teachers and students to create a more effective governance model for the RCSD.

The decision to call for a referendum follows almost one full year of promising developments regarding school reform that have suddenly come to a halt. In July the State Education Department appointed Distinguished Educator Jaime Aquino to evaluate and develop recommendations to improve educational outcomes.

Aquino submitted his report in November and has since been trading questions and responses with the Board of Education. Meanwhile, Mayor Warren said she has had private conversations with State Education Commissioner MaryEllen Elia and members of the State Board of Regents, at which she expressed her support for a State plan to assume operations of the RCSD while a reform model is developed. No further progress has been made on those conversations. Aquino announced his resignation on May 31, effective today.

###

News media: For more information, contact Press Officer Jessica Alaimo at 428-7135.

## SEE ALSO

---

City Council and Legislation | Education



## Our Children, Our Future, a Local Law of the City of Rochester, NY

WHEREAS, chronic dysfunction and substandard student performance levels have caused the New York State Education Department to investigate the governance of the Rochester City School District, and

WHEREAS, it is the intent of the City to ask its citizens, by the affirmative vote of its electors, to determine if removal of the Board of Commissioners of the City School District for a period of not less than five (5) years to allow the State Commissioner of Education to institute necessary processes and procedures would provide a better educational outcome for our City students;

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Rochester, NY

1. The following amendments are hereby made to the Charter of the City of Rochester:

- a. Section 2-1 is amended to remove the language “the Commissioners of Schools”;
- b. Section 2-8 is amended to remove the language “, and the term of office of Commissioners of Schools is four years;” and
- c. Section 2-13, titled “Salaries of School Board members” is deleted in its entirety.

2. This Local Law is subject to the affirmative vote of the electors of the City of Rochester at the general election to take place on November 5, 2019 and, if certified to have been voted in the affirmative, shall take effect immediately upon filing in the Offices of the Rochester City Clerk and the New York Secretary of State after appropriate amendment of the State Education Law.



# EXHIBIT “C”

Additional Proposed Legislation for the  
June 18, 2019 City Council Meeting -  
Filed in the Office of the City Clerk  
May 30 through June 7

\* \* Please Note \* \*

For questions regarding the proposed legislation,  
call the City Clerk's Office at 585-428-7421



## City of Rochester

City Hall Room 308A, 30 Church Street  
Rochester, New York 14614-1290  
[www.cityofrochester.gov](http://www.cityofrochester.gov)

# COMMITTEE OF THE WHOLE INTRODUCTORY NO. 238

60  
Lovely A. Warren  
Mayor

MAJOR

June 7, 2019

TO THE COUNCIL

Ladies and Gentlemen:

Re: Statement of Necessity

I am submitting this Statement of Necessity so that action may be taken at the June 18 Council Meeting on the attached legislation related to amending the City Charter to remove language referencing the Commissioners of Schools and salaries of School Board Members.

This amendment is necessary to allow the State Commissioner of Education to institute necessary processes and procedures that will provide a better educational outcome for our City students.

Therefore, in order to protect the City's children, it is important to consider this legislation now.

Respectfully submitted,

  
Lovely A. Warren  
Mayor

2019 JUN -7 PM 2:03





## City of Rochester

City Hall Room 308A, 30 Church Street  
Rochester, New York 14614-1290  
[www.cityofrochester.gov](http://www.cityofrochester.gov)

## COMMITTEE OF THE WHOLE INTRODUCTORY NO. 238

Lovely A. Warren  
Mayor

June 7, 2019

TO THE COUNCIL

Ladies and Gentlemen:

Re: Amending the City Charter regarding the  
Commissioners of Schools and Salaries  
of School Board Members

Transmitted herewith for your approval is legislation amending the City Charter to remove language referencing the Commissioners of Schools and salaries of School Board Members.

Chronic dysfunction and substandard student performance levels have caused the New York State Education Department to investigate the governance of the Rochester City School District.


On November 14, 2018, Dr. Jaime Aquino issued the Distinguished Educator's Report, which details 106 findings and 84 recommendations necessary to support and advance district improvements for the Board of Education and District to provide equitable access to high-quality education for all students.

Prompted by the release of the Distinguished Educator's Report, throughout the month of December 2018, Mayor Lovely Warren hosted a series of forums to discuss the opportunities and challenges facing Rochester's schools. The goal was to identify areas for future community partnerships that will promote our children's success and learning. Hundreds of parents, students and community members took the time to come together and emphasize the urgency of confronting the challenges in our schools. In doing so, they recognized that so much of one's future life experiences—from health to wellbeing to income—depends on the acquisition of a quality education.

Based on the conclusions of the Distinguished Educator's Report and the feedback received during the public forums, it is the intent of the City to ask its citizens, by the affirmative vote of its electors, to determine if removal of the Board of Commissioners of the City School District for a period of not less than five (5) years to allow the State Commissioner of Education to institute necessary processes and procedures would provide a better educational outcome for our City students.

Therefore, amendments to the City Charter are necessary to allow the State Commissioner of Education to institute necessary processes and procedures in furtherance of better educational opportunities for our City students.

Respectfully submitted,

  
Lovely A. Warren  
Mayor

  
Lorena C. Scott  
City Council President



**INTRODUCTORY NO.**

**238**

Local Law No.

**Local Law, entitled "Our Children, Our Future," amending the City Charter with regard to Commissioners of Schools**

BE IT ENACTED, by the Council of the City of Rochester as follows:

Section 1. Chapter 755 of the Laws of 1907, entitled "An Act Constituting the Charter of the City of Rochester", as amended, is hereby further amended by modifying Section 2-1 to read as follows:

The electors of the City shall elect the Mayor, five Council-members-at-large, ~~the Commissioners of Schools~~ and the Judges of the City Court. The electors of each City district shall elect one District Councilmember.

Section 2. Chapter 755 of the Laws of 1907, entitled "An Act Constituting the Charter of the City of Rochester", as amended, is hereby further amended by modifying Section 2-8 to read as follows:

The term of each elective officer commences on the first day of January succeeding his or her election, ~~and the term of office of Commissioners of Schools is four years.~~

Section 3. Chapter 755 of the Laws of 1907, entitled "An Act Constituting the Charter of the City of Rochester", as amended, is hereby further amended by deleting Section 2-13, Salaries of School Board members, in its entirety.

Section 4. This Local Law shall be submitted for the approval of the electors of the City of Rochester at the general election to be held on November 5, 2019 and shall take effect only if and when it is certified as having been approved by the affirmative vote of a majority of the qualified electors voting on said proposition and the enactment of appropriate enabling amendments to the Education Law.

Strikeout indicates deleted text, new text is underlined

# EXHIBIT “D”



**ROCHESTER CITY COUNCIL**

**REGULAR MEETING**

**June 18, 2019**

**THE COUNCIL PRESIDENT --- MEETING WILL COME TO ORDER AND THE CLERK WILL CALL THE ROLL.**

**THE COUNCIL PRESIDENT --- REQUEST COUNCIL TO RISE FOR A MOMENT OF SILENCE.**

**THE COUNCIL PRESIDENT — PLEDGE OF ALLEGIANCE TO THE FLAG.**  
Councilmember Gruber

**THE COUNCIL PRESIDENT --- RECOGNITION CEREMONIES.**

**Special Presentation:**

Christopher Mahar

**Retirement:**

**DES:**

\*Richard Paolotto

**DHRM:**

\*Patricia Smith

**DRYS:**

\*Jeanetta Davis-Jackson

**RFD:**

\*John Greico  
\*Thomas Johnson  
\*Bart B. Joseph  
\*James R. Kober

**RPD:**

Frank Alvarado

*\*Not attending meeting*

**APPROVAL OF THE MINUTES**

By Councilmember Spaul

RESOLVED, that the minutes of the Regular Meeting on May 21, 2019 be approved as published in the official sheets of the Proceedings.

**THE COUNCIL PRESIDENT --- AYES OR NAYS**

**THE CITY CLERK—THE FOLLOWING DOCUMENTS ARE HEREBY DIRECTED TO BE RECEIVED AND FILED:**

By President Scott

Committee of the Whole

Resolution confirming the appointment of the Chief of Police  
Int. No. 223

THE COUNCIL PRESIDENT --- AYES OR NAYS

Local Law, entitled "Our Children, Our Future", amending the City  
Charter with regard to Commissioners of Schools, as amended  
Int. No. 238

THE COUNCIL PRESIDENT --- ROLL CALL

THE COUNCIL PRESIDENT --- RECEIVED, FILED AND PUBLISHED.

Adjourned

## **ROCHESTER CITY COUNCIL**

### **REGULAR MEETING**

**June 18, 2019**

#### **ORDINANCES PASSED**

- |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ord. No. 2019 -146 | Authorizing an agreement with SourceLink<br>Int. No. 166 (FIN)                                                                                                                                                                                                                                                                                                                                                                                                      |
| Ord. No. 2019 -147 | Cancellation of erroneous taxes and charges<br>Int. No. 167 (FIN)                                                                                                                                                                                                                                                                                                                                                                                                   |
| Ord. No. 2019 -148 | Authorizing competitive grant applications<br>Int. No. 168 (FIN)                                                                                                                                                                                                                                                                                                                                                                                                    |
| Ord. No. 2019 -149 | Authorizing an agreement for fireworks displays<br>Int. No. 169 (FIN)                                                                                                                                                                                                                                                                                                                                                                                               |
| Ord. No. 2019 -150 | Authorizing an agreement with Corporate Cost Control,<br>Inc Int. No. 170 (FIN)                                                                                                                                                                                                                                                                                                                                                                                     |
| Ord. No. 2019 -151 | Amending Chapter 69 of the Municipal Code with regard<br>to smoking near public libraries Int. No. 171 (FIN)                                                                                                                                                                                                                                                                                                                                                        |
| Ord. No. 2019 -152 | Revenue Anticipation Note Ordinance Delegating To The<br>Director Of Finance The Powers To Authorize The<br>Issuance Of \$50,000,000 Revenue Anticipation Notes Of<br>The City Of Rochester, New York, Or So Much Thereof As<br>May Be Necessary, In Anticipation Of The Receipt Of<br>Certain Revenues For The Fiscal Year Ending June 30,<br>2005, And To Prescribe The Terms, Form And Contents,<br>And Provide For The Sale Of Such Notes<br>Int. No. 172 (FIN) |
| Ord. No. 2019 -153 | Adoption of the Budget estimates for school purposes for<br>the 2019-20 fiscal year and appropriation of sums set<br>forth therein Int. No. 226 (FIN)                                                                                                                                                                                                                                                                                                               |
| Ord. No. 2019 -154 | Levying taxes for municipal purposes for the fiscal year<br>commencing July 1, 2019 and expiring June 30, 2020<br>Int. No. 227 (FIN)                                                                                                                                                                                                                                                                                                                                |

Ord. No. 2019 -155	Levying taxes for school purposes for the fiscal year commencing July 1, 2019 and expiring June 30, 2020 Int. No. 228 (FIN)
Ord. No. 2019 -156	Confirming the assessments, amounts and charges to be inserted in the annual tax rolls for the fiscal year commencing July 1, 2019 and expiring June 30, 2020 Int. No. 230 (FIN)
Ord. No. 2019 -157	Amending the Municipal Code with the respect to towing and storage fees    Int. No. 231 (FIN)
Ord. No. 2019 -158	Amending the Municipal Code with respect to building permit fees    Int. No. 232 (FIN)
Ord. No. 2019 -159	Amending the Municipal Code with respect to water rates Int. No. 233 (FIN)
Ord. No. 2019 -160	Amending the Municipal Code with respect to parking fees    Int. No. 236 (FIN)
Ord. No. 2019 -161	Adoption of the Budget estimates for municipal purposes for the 2019-20 fiscal year, appropriation of sums set forth therein and approving commercial refuse fees Int. No. 225 (FIN)
Ord. No. 2019 -162	Authorizing the sale of real estate    Int. No. 173 (NBD)
Ord. No. 2019 -163	Authorizing agreements for appraisal services Int. No. 174 (NBD)
Ord. No. 2019 -164	Approving the Consolidated Community Development Plan/2019-20 Annual Action Plan    Int. No. 175 (NBD)
Ord. No. 2019 -165	Authorizing submission of the Consolidated Community Development Plan/2019-20 Annual Action Plan and execution of grant agreements with the United States Department of Housing and Urban Development Int. No. 176 (NBD)
Ord. No. 2019 -166	Appropriation of funds for the City Development Fund Int. No. 177 (NBD)

Ord. No. 2019 -167	Appropriating funds and authorizing agreements for business development programs Int. No. 178 (NBD)
Ord. No. 2019 -168	Authorizing appropriations and an agreement for application intake services for the City's housing repair programs Int. No. 179 (NBD)
Ord. No. 2019 -169	Authorizing funding for the Demolition Program Int. No. 180 (NBD)
Ord. No. 2019 -170	Appropriating funds for the Emergency Assistance Repair Program Int. No. 181 (NBD)
Ord. No. 2019 -171	Authorizing funding and an amendatory agreement for housing repair and rehabilitation programs Int. No. 182 (NBD)
Ord. No. 2019 -172	Appropriating funds and authorizing agreements for Lead Hazard Control Grant Program Int. No. 183 (NBD)
Ord. No. 2019 -173	Appropriating funds and authorizing agreements for the HOME Rochester Program Int. No. 184 NBD)
Ord. No. 2019 -174	Appropriating funds and authorizing an agreement for landlord tenant services Int. No. 185 (NBD)
Ord. No. 2019 -175	Appropriating funds and authorizing agreements for foreclosure prevention services Int. No. 186 (NBD)
Ord. No. 2019 -176	Appropriating funds and authorizing agreements for the Buyer Assistance Program Int. No. 187 (NBD)
Ord. No. 2019 -177	Appropriating funds and authorizing amendatory agreements for the Homebuyer Training Program Int. No. 188 (NBD)
Ord. No. 2019 -178	Authorizing loan agreement for the Jefferson Wollensack Housing Creation project Int. No. 189 (NBD)
Ord. No. 2019 -179	Appropriating funds and authorizing agreements for the Emergency Solutions Grant Program Int. No. 190 (NBD)
Ord. No. 2019 -180	Appropriating funds and authorizing an agreement for the Helping Elders Law Program Int. No. 191 (NBD)

Ord. No. 2019 -181	Appropriating funds and authorizing an agreement for the Housing Opportunities for Persons with AIDS Program      Int. No. 192 (NBD)
Ord. No. 2019 -182	Authorizing an agreement and appropriation for the Aging in Place Home Modification Program Int. No. 193 (NBD)
Ord. No. 2019 -183	Authorizing an agreement and appropriations and amending a funding ordinance related to the East Henrietta Road Improvement Project (South City Line to Stan Yale Drive)      Int. No. 194 (PPW)
Ord. No. 2019 -184	Amending the Bond Ordinance in Ordinance No. 2018-334 to authorize the issuance of \$1,005,000 Bonds of the City of Rochester to finance construction and construction inspection services related to the East Henrietta Road Improvement Project (South City Line to Stan Yale Drive) Int. No. 195 (PPW)
Ord. No. 2019 -185	Authorizing an agreement and amending the funding for the Scottsville Road – Elmwood Avenue (West City Line to Mt. Hope Avenue) project      Int. No. 196 (PPW)
Ord. No. 2019 -186	Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,729,000 Bonds of said City to finance a portion of the costs of street improvements in the Scottsville Road – Elmwood Avenue (West City Line to Mt. Hope Avenue) project      Int. No. 197 (PPW)
Ord. No. 2019 -187	Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$250,000 Bonds of said City to finance water improvements on the Scottsville Road – Elmwood Avenue (West City Line to      Mt. Hope Avenue) project      Int. No. 198 (PPW)
Ord. No. 2019 -188	Authorizing an agreement for the Linden Street (South Avenue –      Mt. Vernon Avenue) and Oakland Street (Rockingham Street – Caroline Street) Improvement Project      Int. No. 199 (PPW)



Ord. No. 2019 -189	Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$448,000 Bonds of said City to finance water improvements on the Linden Street (South Avenue – Mt. Vernon Avenue) and Oakland Street (Rockingham Street – Caroline Street) Improvement Project Int. No. 200 (PPW)
Ord. No. 2019 -190	Appropriating funds from the Rochester Pure Waters District Int. No. 201 (PPW)
Ord. No. 2019 -191	Authorizing an agreement for Edgerton R-Center renovations Int. No. 202 (PPW)
Ord. No. 2019 -192	Amending Ordinance No. 2013-294 to authorize the acquisition of a portion of 80-110 Manor Parkway for the Manor Parkway Improvement Project Int. No. 203 (PPW)
Ord. No. 2019 -193	Authorizing an amendatory agreement for the Residential Curb Ramps (Culver Road East to City Line) project Int. No. 204 (PPW)
Ord. No. 2019 -194	Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$580,000 Bonds of said City to finance the Residential Curb Ramps (Culver Road East to City Line) project Int. No. 205 (PPW)
Ord. No. 2019 -195	Amending Ordinance No. 2019-94 relating to additional right-of-way on Boxart Street Int. No. 206 (PPW)
Ord. No. 2019 -196	Amending Ordinance No. 2019-99 as it relates to an agreement with Passero Associates, Engineering, Architecture & Surveying, D.P.C. for Clinton-Baden Community Center Renovations Int. No. 207 (PPW)
Ord. No. 2019 -197	Authorizing agreements for services related to the Brownfield Opportunity Area Site Assessment Program Int. No. 208 (PPW)
Ord. No. 2019 -198	Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$181,000 bonds of said City to finance the costs of an environmental remediation project at the Andrews Street Site in the City Int. No. 209 (PPW)

Ord. No. 2019 -199	Amending the Municipal Code with regard to wholesale water rates      Int. No. 210 (PPW)
Ord. No. 2019 -200	Appropriating funds and authorizing an agreement for the South Avenue and Elmwood Avenue Street Improvement Project design services    Int. No. 211 (PPW)
Ord. No. 2019 -201	Authorizing agreements and appropriation for the State Street Reconstruction Project      Int. No. 212 (PPW)
Ord. No. 2019 -202	Authorizing an agreement for two new Rochester Police Department Section Offices      Int. No. 224 (PPW)
Ord. No. 2019 -203	Accepting a donation and amending the 2018-19 Budget for Norton Village Playground improvements Int. No. 161 (PSYR)
Ord. No. 2019 -204	Authorizing agreements for the 2019-20 Gun Involved Violence Elimination Program      Int. No. 213 (PSYR)
Ord. No. 2019 -205	Authorizing an agreement for emergency veterinary services    Int. No. 214 (PSYR)
Ord. No. 2019 -206	Amending the Municipal Code with respect to the Fire Prevention Code    Int. No. 215 (PSYR)
Ord. No. 2019 -207	Authorizing an agreement with All Pro Catalyst, LLC Int. No. 216 (PSYR)
Ord. No. 2019 -208	Authorizing agreements for the Teenage Pregnancy Prevention Program    Int. No. 217 (PSYR)
Ord. No. 2019 -209	Appropriating funds and authorizing agreements for the Sexual Risk Avoidance Education Grant and Program Int. No. 239 (PSYR)
Ord. No. 2019 -210	Authorizing <del>an</del> agreements for the receipt and use of funds for the 2019 Summer Food Service Program, <b><u>as amended</u></b> Int. No. 218 (PSYR)
Ord. No. 2019 -211	Authorizing an agreement for the 2019 KeyBank Rochester Fringe Festival    Int. No. 219 (A&C)

Ord. No. 2019 -212	Authorizing an agreement for the Roc Holiday Village event Int. No. 220 (A&C)
Ord. No. 2019 -213	Authorizing an agreement with the Rochester Philharmonic Orchestra, Inc. for public music performances Int. No. 221 (PPW)
Ord. No. 2019 -214	Authorizing an agreement with Puerto Rican Festival, Inc. Int. No. 222 (A&C)

### **Resolutions**

Res. No. 2019-8	Resolution approving the 2019-20 debt limit for general municipal purposes with an exception for certain Roc the Riverway capital projects Int. No. 235
Res. No. 2019-9	Resolution confirming the appointment of the Chief of Police Int. No. 223

### **Local Law**

Local Law No. 3	Local Law amending the City Charter relating to the Information Technology Department Int. No. 234
Local Law No. 4	Local Law, entitled "Our Children, Our Future", amending the City Charter with regard to Commissioners of Schools, <b>as amended</b> Int. No. 238

### **LOCAL IMPROVEMENT ORDINANCE**

L.I.O. 1759	Local Improvement Ordinance – Street cleaning, street and sidewalk snow removal, and hazardous sidewalk repair commencing July 1, 2019 and expiring June 30, 2020 Int. No. 229 (FIN)
-------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### ITEMS HELD IN COMMITTEE

- Int. No. 223      Authorizing an agreement with the Verona Street Animal Society  
PSYR (06/19/18)
- Int. No. 19      Amending the City Charter with respect to the creation of a Police  
Accountability Board COW (01/15/19)
- Int. No. 237      Amending the Municipal Code with respect to electric scooter  
requirements PPW (06/18/19)

# EXHIBIT “E”



**City of Rochester**

**City Clerks Office**

# **Certified Local Law**

**Rochester, N.Y.,** \_\_\_\_\_

## **TO WHOM IT MAY CONCERN:**

I hereby certify that the following is a true copy of a local law which was duly passed by the Council of the City of Rochester on **June 18, 2019** and **Approved** by the Mayor of the City of Rochester, and was deemed duly adopted on **July 8, 2019** in accordance with the applicable provisions of law.

Local Law No. 4

**Local Law, entitled “Our Children, Our Future,” amending the City Charter with regard to Commissioners of Schools, as amended**

BE IT ENACTED, by the Council of the City of Rochester as follows:

Section 1. Chapter 755 of the Laws of 1907, entitled “An Act Constituting the Charter of the City of Rochester”, as amended, is hereby further amended by modifying Section 2-1 to read as follows:

The electors of the City shall elect the Mayor, five Council-members-at-large, ~~the Commissioners of Schools~~ and the Judges of the City Court. The electors of each City district shall elect one District Councilmember.

Section 2. Chapter 755 of the Laws of 1907, entitled “An Act Constituting the Charter of the City of Rochester”, as amended, is hereby further amended by modifying Section 2-8 to read as follows:

The term of each elective officer commences on the first day of January succeeding his or her election, ~~and the term of office of Commissioners of Schools is four years.~~

Section 3. Chapter 755 of the Laws of 1907, entitled “An Act Constituting the Charter of the City of Rochester”, as amended, is hereby further amended by deleting Section 2-13, Salaries of School Board members, in its entirety.

Section 4. The Charter amendments provided for herein shall remain in effect for a period of not less than five (5) years.



Section-4 5. This Local Law shall be submitted for the approval of the electors of the City of Rochester at the general election to be held on November 5, 2019 and shall take effect only if and when it is certified as having been approved by the affirmative vote of a majority of the qualified electors voting on said proposition and the enactment of appropriate enabling amendments to the Education Law.

Strikeout indicates deleted text, new text is underlined.


Adopted by the following vote:

Ayes - President Scott, Councilmembers Evans, Gruber, Lightfoot, Patterson - 5.

Nays - Councilmembers Clifford, Ortiz, Spaul - 3.

Councilmember Harris abstained due to a professional relationship.

Attest

  
\_\_\_\_\_

City Clerk

# EXHIBIT “F”



## City of Rochester, NY

City Hall Room 308A, 30 Church Street  
Rochester, New York 14614-1290  
[www.cityofrochester.gov](http://www.cityofrochester.gov)

Lovely A. Warren  
Mayor

July 12, 2019



Dear Friends,

**For far too long, our kids have been failed by a broken educational system in Rochester.**

As a result, we have all been affected – our friends, families, businesses and neighborhoods. But, as the Distinguished Educator concluded, the time for a total reset of our system is now.

**Everyone agrees that we must fix our schools and provide our kids the education they deserve.**

Earlier this month, the majority of City Council voted to allow a referendum on November 5 regarding temporary state leadership of our schools and I want to tell you why we believe this was necessary.

For decades, Mayors and City leadership have tried to work with the Board of Education to impact schools and improve the results for our children. **Over 67% of our children start kindergarten ready to learn. But, despite our best efforts, by 3rd grade only 17% of our students are reading and doing math at grade level. This 50% drop in test scores, along with almost half our students not graduating on time, demands action.**

**Many have shared that the most important voices -- City parents and residents -- have been ignored.** Many City parents have no choice but, to send their kids to a school system they know has failed almost half of its children. The referendum allows City parents and residents to be heard and decide the future of our schools.

**The power no longer rests with the school board, city council, other elected officials or even the mayor -- it is now in your hands.** During my tenure as Mayor, I have worked with 6 different Superintendents, many different School Chiefs and scores of others. The constant change of leadership in our schools and the lack of school autonomy is of great concern.

Temporary state leadership would allow us to reset the school system with the help of local and national educational experts. They would work, alongside parents, to implement the distinguished educator's recommendations including: **making every school a community school; improving special and expanding bilingual education; along with increased support for science, technology, arts, math and sports.**

**This year, your voice matters.** Our children's future is in your hands. In November you will get the voice you've been denied for far too many years. **I hope you join with me and vote** so, once and for all, we know exactly what you -- our parents and citizens -- want.

Frederick Douglass said, "It is easier to build strong children than to repair broken men."

**It's time that we start building strong children together.**



Sincerely,

Mayor Lovely A. Warren  
City of Rochester

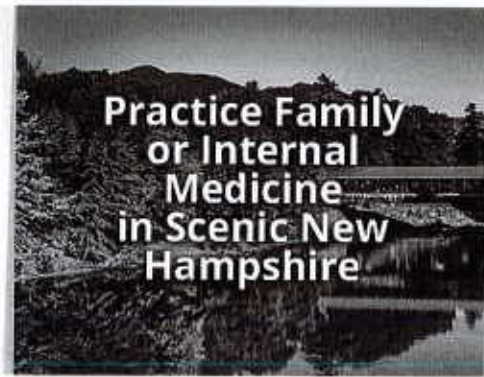
# EXHIBIT “G”

## Legality of mayor's letter on school vote 'a judgement call,' state watchdog says



### Ready to make a difference?

Littleton Regional Healthcare is currently seeking full-time Internal Medicine Physicians to join our Primary Care Office in Littleton.



Physician Led,  
Professionally  
Managed



Salaries  
Up to \$230k  
Annually

Join Our Team

## Legality of mayor's letter on school vote 'a judgement call,' state watchdog says

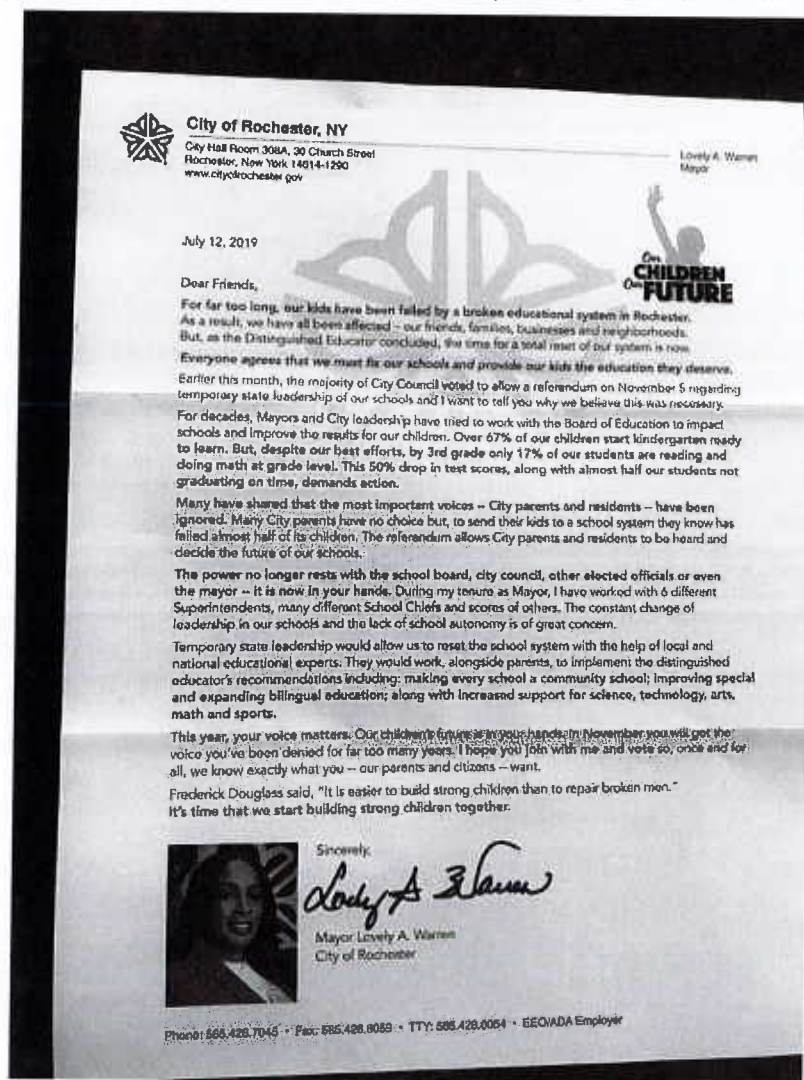
**Brian Sharp**, Rochester Democrat and Chronicle Published 8:00 a.m. ET July 19, 2019 | Updated 2:16 p.m. ET July 19, 2019

Questions about a potential misuse of city resources began shortly after Mayor Lovely Warren's letter began hitting mailboxes this week.

The subject of the letter was **the non-binding referendum** on a state takeover of the City School District that will be on November's general election ballot.

While not advocating a yes or no vote, the mayor wrote: "Everyone agrees that we must fix our schools," and framed the referendum as finally giving parents and residents a voice. Warren highlighted concerns, asserted that a temporary takeover would allow for a reset and, in bold text, stated: "I hope you join with me and vote."

## Legality of mayor's letter on school vote 'a judgement call,' state watchdog says



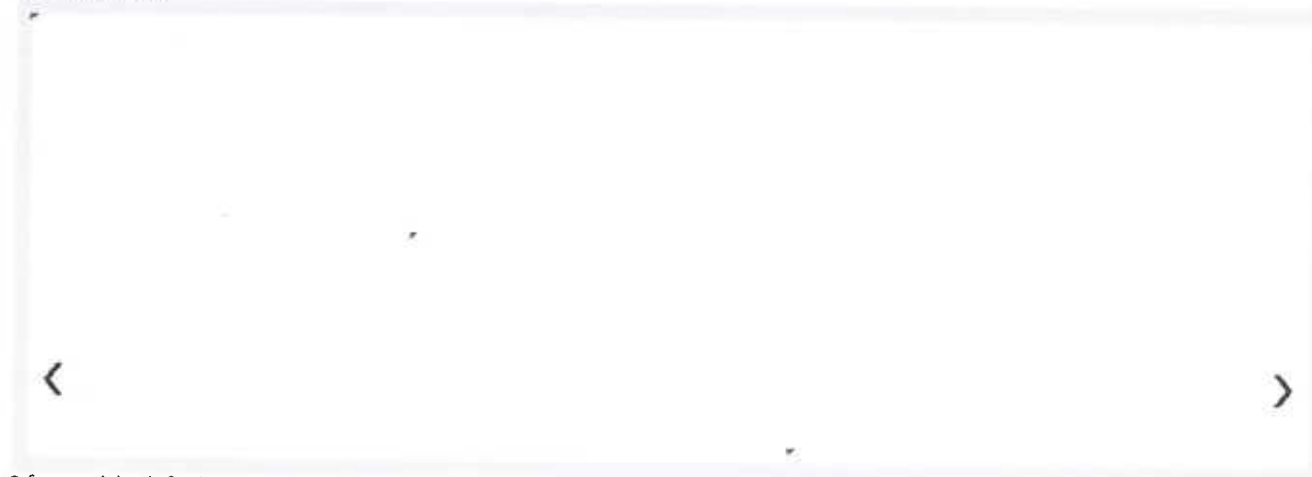
Mayor Lovely Warren mailed letters to 30,000 city households this week urging them to vote in the upcoming school referendum. (Photo: Provided image)

The mailing, **written on city letterhead and sent in a city envelope**, went out to 30,000 addresses, including to service providers, and cost taxpayers roughly \$10,000, mainly in postage, officials said.

Under state and federal law, public resources cannot be used to influence a partisan election.

"This does not clearly fall into that camp," said Russ Haven, general counsel for the New York Public Interest Group.

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## Legality of mayor's letter on school vote 'a judgement call,' state watchdog says

That's because, while the ballot issue might be politically charged, it is a nonpartisan question. And on that, "the law is a little bit on the muddy side," Haven said.

The ballot question was proposed by Warren and City Council President Loretta Scott, and [approved by City Council last month on a split vote](https://www.democratandchronicle.com/story/news/2019/06/18/council-oks-school-vote-police-chief-parking-rate-hikes/1489093001/). Warren has been outspoken in advocating for a temporary state takeover, which would replace the existing elected school board with an appointed one.

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"Many City parents have no choice but, (sic) to send their kids to a school system they know has failed almost half its children," the mayor wrote. "The referendum allows City parents and residents to be heard and decide the future of our schools."

**What you need to know:** [A quick guide to the school referendum](https://www.democratandchronicle.com/story/news/2019/06/07/rcsd-takeover-what-we-know-referendum-rochester-schools/1383177001/)

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### City limited in ability to advocate

She decries poor English and math test scores among grade-school students, turnover of superintendents and a lack of school autonomy as "of great concern."

"The power no longer rests with the school board, city council, or other elected officials or even the mayor — it is now in your hands," she wrote.

"The letter educates as to why the referendum is on the ballot," said Warren spokesman Justin Roj. "It does not advocate for a position. The mayor has been consistent in that we can't continue to do the same thing and expect a different result ... She has an opinion, which she doesn't state in that letter."

The administration's plan going forward is to continue the conversation, Roj said, but "certainly the city will abide by the limits it faces as it relates to advocating for the proposition."

"Temporary state leadership would allow us to reset the school system with the help of local and national educational experts," Warren wrote. "They would work, alongside parents, to implement the distinguished educator's recommendations."

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## Legality of mayor's letter on school vote 'a judgement call,' state watchdog says

The referendum does not trigger any action, however, but would be used to lobby state lawmakers to intervene. Collectively, they have shown little appetite to do so.

### White points to graduation rate

The letter includes a logo, "Our children, our future" over the silhouette of a child, arm raised. School Board President Van White took issue with the slogan: "What do people in Albany know about our children?" he asked.

A civil rights lawyer, he declined comment on the legality of the letter, saying it was not his area of expertise.

But he called the referendum "a plan to replace people," not to improve education, adding: "We don't even know the people who are going to be picking the people." The comment was in reference to state Education Commissioner [MaryEllen Elia announcement that she is resigning \(/story/news/politics/albany/2019/07/15/why-maryellen-elia-new-york-education-commissioner-surprisingly-set-resign/1735831001/\)](#), effective at the end of August.

Warren's letter does not mention the four-year graduation rate, White noted, which he expects to be better than 60 percent this year. It was 39 percent when he joined the school board in 2007.

"This challenge that we have is much more complicated than can be put into a slogan or a simple letter," White said, pointing to the city's extreme poverty, to neighborhood violence, and to district efforts to improve special education, standardize curriculum and improve instruction and governance (for which, he said, a plan is soon to be announced).

Where White paints the referendum as taking away voters' choice to elect a school board, Warren paints the referendum as finally giving them a say.

"This year, your voice matters," Warren wrote. "Our children's future is in your hands. In November, you will get the voice you've been denied for far too many years. I hope you join with me and vote so, once and for all, we know exactly what you — our parents and citizens — want."

She concludes: "It's time that we start building strong children together."

"It's a judgement call as to whether somebody feels it crosses the line," said NYPIRG's Haven. "I don't see an obvious issue with this. It's up to the voters to decide whether they think the mayor did a good thing or a bad thing."

In such cases, Haven said, he always suggests seeking advice from an independent arbiter. Roj said the administration relied on the opinion of the city's legal department.

[BDSHARP@Gannett.com](mailto:BDSHARP@Gannett.com)

**More:** [Warren seeks referendum on state takeover of city schools \(/story/news/2019/06/07/rochester-ny-mayor-lovely-warren-seeks-referendum-state-takeover-rcsd-harry-bronson/1379443001/\)](#)

**More:** [Bronson says Warren's plan 'abdicates responsibility to lead' \(/story/news/2019/06/13/rcsd-rochester-school-district-reform-bronson-warren-referendum-state-control/1440475001/\)](#)

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SUPREME COURT  
COUNTY OF MONROE STATE OF NEW YORK

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ROCHESTER SCHOOL DISTRICT,  
and the BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT,

Index No.: \_\_\_\_\_

Petitioners,

- against -

CITY OF ROCHESTER, LOVELY A. WARREN,  
as Mayor of the City of Rochester, COUNCIL OF  
THE CITY OF ROCHESTER, and the MONROE  
COUNTY BOARD OF ELECTIONS,

Respondents.

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**MEMORANDUM OF LAW IN SUPPORT OF THE PETITION**  
**PURSUANT TO CPLR § 6311, CPLR ARTICLE 78**  
**AND FOR DECLARATORY RELIEF**

**ROCHESTER CITY SCHOOL DISTRICT**  
**DEPARTMENT OF LAW**

**Karl W. Kristoff, General Counsel**

Alison K.L. Moyer, Esq.

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## **PRELIMINARY STATEMENT**

This Memorandum of Law is submitted on behalf of Petitioners, Rochester City School District (hereinafter the “District”), and the Board of Education of the Rochester City School District (hereinafter the “Board”), in support of the Petition seeking the following relief:

(1) An Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the Respondents, City of Rochester (hereinafter the “City”), Lovely A. Warren, as Mayor of the City of Rochester (hereinafter the “Mayor”), Council of the City of Rochester (hereinafter the “City Council”), and the Monroe County Board of Elections (hereinafter the “Board of Elections”), from placing the Referendum referred to in Local Law 4, entitled “Our Children, Our Future,” duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the “Referendum”), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the “Ballot”); and enjoining the Respondents from further using public funds with regard to the Referendum; and waiving any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1); and

(2) An Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum, and for an Order and Judgment granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable.

The relevant facts and evidence are discussed more fully in the accompanying verified petition and the affirmation of Alison K.L. Moyer, Esq., dated July 26, 2019, and in the interest of brevity, will not be further reiterated.

## **ARGUMENT**

### **POINT I**

#### **THE PROPOSED REFERENDUM IS AN UNAUTHORIZED ADVISORY REFERENDUM**

Municipalities cannot adopt ordinances or offer referendums that are advisory in nature. In the absence of express statutory authority, an advisory referendum is not authorized. *Mills v. Sweeney*, 219 N.Y. 213 (1916). See *Kupferman v. Katz*, 19 A.D.2d 824 (1st Dept. 1963) (“The City of New York possesses no such authority.”); *Municipal Home Rule Law* §§ 2, 37.

The Court must examine the legal effect of the passage of a proposed referendum. If the local law or ordinance being enacted by referendum is not in truth and in fact a real amendment to the city charter, it cannot be placed on the ballot. *Astwood v. Cohen*, 291 N.Y. 484 (1943).

A referendum is deemed to be advisory if the municipality is asking the voters going to a polling place during a municipal election to cast a ballot on a proposed question that is outside the powers expressly granted to a municipality in the city charter. *Woodburn v. Village of Owego*, 151 A.D.3d 1216 (3d Dept. 2017).

A referendum is also advisory if it is merely a measure for the taking of an advisory popular vote, having no legal effect or consequences by its passage. *Mills, supra*. If the referendum can be seen as a transparent attempt by a referendum on some technical basis to make a determination

that avoids governmental responsibility and shifts the burden of a decision to a public poll. *Kupferman, supra*.

Finally, a proposed referendum must be deemed to be advisory if the referendum conflicts with authority granted to the State or Federal Government, or if the local law enacted would be preempted by State or Federal law. *Fossella v. Dinkins*, 130 Misc.2d 52 (Richmond County 1985). *See Silberman v. Katz*, 54 Misc. 2d 956 (1967); *Brucia v. County of Suffolk*, 90 A.D.3d 762 (2d Dept. 1982). *See also Opinions of the New York State Comptroller*, Opinion No. 1988-70; Opinion No. 1991-58; Opinion No. 1996-18.

The City's plan to include a referendum on the November 2019 ballot to approve Local Law No. 4, "Our Children, Our Future," is for the taking of nothing more than an advisory vote. The referendum would put a public poll on a ballot, which, if approved, would have no legal effect or consequences. The City Council apparently has recognized this fact, as the passage of the Local Law depends not only on whether the majority of voters approve the proposition, but on the State enacting the "appropriate enabling amendments to the Education Law."

The City is also asking residents to approve an amendment to the City Charter that is outside the City's legal authority. If the City removes the words "Commissioners of Schools" from the portion of its charter governing the offices that are subject to popular vote, it can have no legal effect, because the law that requires residents to elect members of the Board of Education is Education Law § 2553, which preempts any local law to the contrary. The removal of "the term of office of Commissioners of Education is four years" from the City Charter has similarly no legal effect, because the Board Members' terms are governed by Education Law § 2553.



Based on the foregoing, the Referendum is an unauthorized advisory referendum. It cannot be placed on the Ballot, and an injunction must be immediately issued to keep the Referendum from the ballot prior to the August 5, 2019 deadline.

## POINT II

### **PUBLIC FUNDS SHOULD NOT BE USED TO PLACE THE REFERENDUM ON THE BALLOT OR PROMOTE THE PASSAGE OF THE LOCAL LAW**

Municipal governments may use public money for the purpose of adequately informing the public concerning proposed laws and issues, however, the government may not take any action involving the use of public funds to urge a yes or a no vote. *Stern v. Kramarsky*, 84 Misc.2d 447 (New York County 1975).

Municipalities may use public funds “to educate, to inform, to advocate or promote voting on any issue . . . provided it is not to persuade nor to convey favoritism, partisanship, partiality, approval or disapproval.” *Phillips v. Maurer*, 67 N.Y.2d 162 (1986) (*citing Stern*). Public funds may be used to inform and educate the public, so long as those efforts are done in a reasonably neutral fashion. *Schultz v. State*, 86 N.Y.2d 225 (1995).

State and Local governments “must maintain a position of neutrality and impartiality. . . . For government agencies to attempt to influence public opinion on such matters inhibits the democratic process through the misuse of government funds and prestige. Improper expenditure of funds, whether directly through promotional and advertising activities or indirectly through the use of government employees or facilities cannot be countenanced.” *Stern, supra*. See also *Opinions of the New York State Comptroller*, Opinion No. 1980-411; Opinion No. 1980-762; Opinion No. 1988-32; Opinion No. 1992-31; Opinion No. 1994-5.

To date, the City and the Mayor have spent at least \$10,000 of public funds for what appears to be advocacy for and promotion of the Local Law and Referendum. The City has produced a video, and has issued news releases. If an injunction is not issued, public funds will be expended to place the Referendum on the Ballot, and further promotion may occur by the City as Election Day nears.

Based on the foregoing, the Respondents should be enjoined from using public funds with regard to the Referendum, and an injunction must be immediately issued preventing further public funds from being used.

### **POINT III**

#### **SUFFICIENT GROUNDS EXIST FOR THE COURT TO GRANT A PRELIMINARY INJUNCTION REGARDING THE REFERENDUM**

Pursuant to CPLR § 6301, “a preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring . . . an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.” *CPLR § 6301*.

The purpose of a preliminary injunction “is to preserve the *status quo* until a decision is reached on the merits. In order to be granted a preliminary injunction, the moving party must demonstrate: (1) a likelihood of success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) a balancing of the equities favors his position. A motion for a



preliminary injunction is addressed to the sound discretion of the trial court.” *Watmet, Inc. v. Robinson*, 116 A.D.2d 998, 999; 498 N.Y.S.2d 619 (4th Dept. 1986).

Preliminary injunctions have long been the remedy in actions brought by petitioners to enjoin municipalities from placing improper referendums on ballots, and to enjoin municipalities from using public funds to promote referendums or legislation. *See Mills v. Sweeney, supra*, 219 N.Y. 213 (1916); *Stern v. Kramarsky, supra*, 84 Misc.2d 447; 375 N.Y.S.2d 235 (New York County 1975) (Where the petitioners’ “application for a preliminary injunction is granted to the extent of restraining the defendants from supporting, promoting, campaigning or otherwise acting to achieve passage” of proposed legislation.).

An immediate preliminary injunction is warranted here. This action’s merit is demonstrated above, because the Referendum is advisory in nature, and thus, is invalid and improper. It is respectfully submitted that the public interest is best served by granting a preliminary injunction against Respondents herein. As discussed in the accompanying Verified Petition and Affirmation, harm would result to the District, the Board, and to the general public if the Referendum was permitted to be placed on the Ballot on August 5, 2019 as required by Election Law § 4-108(1)(b), and if public funds continued to be spent to support a Referendum that is advisory, has no actual legal effect, is preempted by New York State law, and is, essentially, an impermissible opinion poll being put to a popular vote.

### **CONCLUSION**

For the reasons as set forth above and as detailed in the accompanying Verified Petition and Affirmation, it is respectfully requested that the Court grant the following relief:

- (1) An Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the

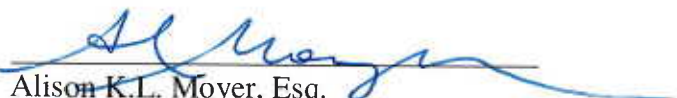
Respondents, City of Rochester (hereinafter the “City”), Lovely A. Warren, as Mayor of the City of Rochester (hereinafter the “Mayor”), Council of the City of Rochester (hereinafter the “City Council”), and the Monroe County Board of Elections (hereinafter the “Board of Elections”), from placing the Referendum referred to in Local Law 4, entitled “Our Children, Our Future,” duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the “Referendum”), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the “Ballot”); and enjoining the Respondents from further using public funds with regard to the Referendum; and waiving any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1); and

(2) An Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum, and for an Order and Judgment granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable

Dated: July 26, 2019  
Rochester, New York

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